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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/717,402	11/19/2003	Randall J. Huebner	ACM 356	7456
23581	7590	08/11/2006	EXAMINER	
KOLISCH HARTWELL, P.C. 200 PACIFIC BUILDING 520 SW YAMHILL STREET PORTLAND, OR 97204				RAMANA, ANURADHA
ART UNIT		PAPER NUMBER		
				3733

DATE MAILED: 08/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/717,402	HUEBNER	
	<b>Examiner</b>	<b>Art Unit</b>	
	Anu Ramana	3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 18 May 2006.  
 2a) This action is FINAL.                  2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 33-56 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 33-44,46-51,54 and 55 is/are rejected.  
 7) Claim(s) 45,52,53 and 56 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 19 November 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08),  
 Paper No(s)/Mail Date 10/4/2004; 3/3/05; 10/26/05; 10/31/05,

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election without traverse of the invention of Group I and Species V (Fig. 11) in the reply filed on May 18, 2006 is acknowledged.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 33-35, 39-43, 46-49 and 51 are rejected under 35 U.S.C. 102(b) as being anticipated by Morgan (US 4,905,679).

Morgan discloses a bone fracture reduction device 10 that is surgically applied to the opposing sides of a bone discontinuity and is deformed at a leg section 14 using pliers after the device has been secured to bone fragments by screws 18 (Fig. 3, col. 5, lines 53-68 and col. 6, lines 1-15).

Claims 33-35, 39-44, 46-49, 51 and 54 are rejected under 35 U.S.C. 102(b) as being anticipated by Murray (US 6,093,188).

Murray discloses a bone plate 40 that is secured to bone segments 42 and 43 across a fracture 46 by threaded pins or screws 48 after which a tool is used to deform bridges 14 by engaging the tips of the tool in apertures 38 (Fig. 4, col. 3, lines 57-67 and col. 4, lines 1-17).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 33, 36-38, 48 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shapiro (US 4,414,967) in view of Morgan (US 4,905,679).

Shapiro teaches application of a fixation device such as a plate to the distal radius and smaller bones such as phalanges (Fig. 9 and col. 4, lines 14-31).

Shapiro discloses all elements of the claimed invention except for the use of a plate having a bridging section 14 that is deformed using a tool after the plate is secured to bone fragments during fracture reduction.

Morgan supplies the missing elements (see previous discussion of Morgan).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have substituted the Morgan device, for the Shapiro fixation device, during fixation of fractures of the radius and phalanges wherein so doing would amount to mere substitution of one functionally equivalent fixation structure for another within the same art and the selection of any of these devices would work equally well in the Shapiro method.

The method steps of claims 33, 36-38, 48 and 50 are rendered obvious by the above discussion.

Claims 33, 36-38, 48, 50, 54 and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shapiro (US 4,414,967) in view of Murray (US 6,093,188).

Shapiro teaches application of a fixation device such as a plate to the distal radius and smaller bones such as phalanges (Fig. 9 and col. 4, lines 14-31).

Shapiro discloses all elements of the claimed invention except for the use of a plate having a bridging section 14 that is deformed using a tool after the plate is secured to bone fragments during fracture reduction.

Murray supplies the missing elements (see previous discussion of Murray).

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to have substituted the Murray device, for the Shapiro fixation device, during fixation of fractures of the radius and phalanges wherein so doing would amount to mere substitution of one functionally equivalent fixation structure for another within the same art and the selection of any of these devices would work equally well in the Shapiro method.

The method steps of claims 33, 36-38, 48, 50, 54 and 55 are rendered obvious by the above discussion.

***Allowable Subject Matter***

Claims 45, 52, 53 and 56 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anu Ramana whose telephone number is (571) 272-4718. The examiner can normally be reached Monday through Friday between 8:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached at (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AR

August 6, 2006

